tate's top court reverses upreme Court decision

Associated Press

LBANY — New York's nstitution imposes a higher ndard on judges than the fed- l Constitution in issuing rch warrants for the seizure allegedly obscene material, state's top court ruled ay.

n a 6-0 ruling, the state Court Appeals reversed the outcome a U.S. Supreme Court deci- n on obscenity cases in New k by applying the state Con- ution to a case involving an e County video rental busi- s.

Earlier this year, the Supreme urt had ruled that police offi- s involved in obscenity cases 't have to meet any higher ndards of probable cause n in other types of cases. at ruling, based on the federal nstitution, had reversed a 5 decision by New York's top rt.

ut today, the state court re- ved the same case, conclud- the state Constitution's pro- ions against unreasonable rches and seizures were ater than those offered in the eral Constitution.

bscenity charges were pped against James Erhardt his former store, P.J. Video ., doing business as Network eo.

aw officers, it concluded st submit statements de- bing allegedly obscene films reat detail before a judge can er material seized as evi- ce, the state court conclud-

NEW YORK STATE

"One of the powers reserved to the states is the power to define what conduct shall be criminal within its borders," Judge Richard Simons wrote for the court majority.

"Given that our Legislature, consonant with federal constitutional mandates, has determined that an offensive, explicit depiction of sexual conduct, standing alone, is not obscene, neither an issuing magistrate nor a reviewing court can legitimately override that legislative intent and find probable cause that the crime of obscenity has been committed based solely on a showing that sexually oriented material is explicit and offensive," Simons wrote.

The court had concluded that statements submitted by David Groblewski, a confidential criminal investigator with the Erie County district attorney's office, didn't provide enough evidence to warrant the seizure of videocassettes of five allegedly obscene films.

While Groblewski's statements used anatomically explicit language to describe several types of sexual conduct he saw when viewing the films, he didn't indicate whether the descriptions covered all the scenes, and he made no attempt to reveal the story lines or lack of them, the court said.

ndine, Kavanagh have debate at Alfred

Associated Press

LFRED — The site was a rural university campus upstate, but y York City loomed large in the first public debate between tenant governor candidates Stanley N. Lundine and Michael anagh.

avanagh, the running mate of Republican gubernatorial candi- e Andrew P. O'Rourke, told about 300 people at Alfred Universi- esterday that "unfortunately this is a tale of two states" with taters paying disproportionately for downstaters.

eferring to an ongoing scandal in the city, he also said Democrat- ov. Mario M. Cuomo is "grossly insensitive to the problems of uption in politics."

avanagh maintained there are "ethical improprieties of the est order" in the relationship between the New York City law of Cuomo's son, Andrew, and city developers.

uomo running mate Lundine refuted Kavanagh's charges and , "This kind of insinuation and mudslinging has unfortunately acterized the Kavanagh campaign from the very beginning."

eferring specifically to Kavanagh's contention about Andrew mo, Lundine added, "There's no place in public debate for that of unsupported insinuation."

ndine said the younger Cuomo "doesn't represent anybody who business with the state of New York. "That's a self-imposed cal standard, not required by the bar association, not required by e law," he said.

he two men had met once before in a debate at the New York es Oct. 14, but the Alfred debate was the first one open to the ic.

rcine portrayal of D'Amato's votes

Associated Press

EW YORK — The Democratic nominee for U.S. Senate, Mark en, says Sen. Alfonse M. D'Amato hasn't brought home the n.

Where's the pork, Al?" Green asked yesterday as he displayed a aling, 22-pound piglet. The pig represented D'Amato's voting rd, Green said, which he charged cost New Yorkers more $11 billion in federal funds.

We're not dealing with a 800-pound pig here. We're dealing with dorable little piglet . . . that represents how little Al D'Amato has n us," he said.

spokesman for D'Amato dismissed the charge, saying the tor has brought a fair share of federal dollars to the state.

een showed off the piglet at a news conference outside 1 Penn a, where D'Amato has his Senate office.

Nudity ruling becomes issue in Topfree case

By KATE PHILLIPS
Times-Union

10/28

Last week's decision by the state's highest court to uphold a governmental ban on nudity in public parks today became one of the central issues in post-trial arguments in the case of the Topfree Seven at Cobbs Hill Park.

David R. Moss, who represents five of the seven women arrested June 21 after they bared their breasts in a protest, today argued that the case involving these women differs substantially from the Court of Appeals' decision rendered last week.

In *The People vs. Robert Hollman*, the Court of Appeals ruled Oct. 21 that Hollman's constitutional right to free expression was not violated when he was arrested after sunbathing nude at Riis Park in Queens.

Despite Hollman's beliefs in "naturism," the court ruled that the government may prohibit public nudity and regulate the use of public beaches for all citizens.

City Court Judge Herman J. Walz Jr. said today he would decide Dec. 16 whether the state law on public exposure is constitutional.

The women have argued that the state law violates their rights to equal protection and to freedom of expression. The state law discriminates against women, they say, because men are allowed to take off their shirts in public while women generally are prohibited from doing so, except for breastfeeding, entertainment or some educational purposes.

In an exchange between defendant Mary Lou Schloss, who is representing herself, and the judge, Walz acknowledged that French women sunbathe nude on the Riviera, but asked whether a woman walking "topfree" along the Champs Elysees would "offend the sensibilities of the French people."

Schloss said two French women told her that they had resolved this "topfree" argument 20 years ago, and now could "link arms and walk down the street and no one would bat an eye."

Walz remarked that if he were to strike the law down as unconstitutional, then hypothetically, "women would be free of any sanction" and could "walk barebreasted out at the Four Corners of Rochester."

One of the central issues before Walz is the contemporary definition of a woman's breasts — whether they are considered "sexual organs" or, as the women contend, whether breasts have been construed by society as "sex objects."

Assistant District Attorney Thomas J. Brilbeck today supported the constitutionality of the law by saying the state has a right to ban public nudity.

"While the law prohibits only females, and not males from exposing their breasts in public areas, it does so with the understanding that our community and our courts continue to define female breasts as sexual or intimate parts of a person's body," Brilbeck wrote in his motion papers.

In court, he said, "At least a substantial portion (of the public) has a right not to be exposed to the sexual portions of another person's body."

Brilbeck said prosecution of the Topfree Seven is not a violation of their fundamental rights.

Today, Moss said the new appeals

did not convey a message and that he merely was sunbathing to get an "overall tan."

He said the Cobbs Hill women concede that the state has the authority to regulate nudity, but that they believe the state cannot make those regulations in a "gender-discriminatory manner."

Unlike Hollman, the women were protesting the law at Cobbs Hill when arrested, and were exercising their rights to expression, Moss said.

Assistant Public Defender Lawrence L. Kasperek, who represents one of the women, also argued today that the prosecution had not proven that the state law was designed to promote an "important governmental objective."

Citing equal protection standards established by the U.S. Supreme Court and the New York courts, Kasperek said there must be "hard proof" for any differential treatment between men and women in state law and that the law must be free of "fixed notions of traditional sex-stereotyping."

Despite the prosecution's contention that the state has an interest in maintaining community standards, Kasperek argued that a 1984 Court of Appeals case stated that it "is not the function of the New York state penal law to promote or enforce community mores."

But Brilbeck argued that changing the law "is the job of the Legislature. It always has been, it always will be."

Besides Schloss, the other defendants in the case are Ramona Santorelli, Nikki G. Craft, Kathleen F. Reilly, Debora A. Seymour, Elise Jo Tooley and Lynn E. Zicari.

Death Notices

Within Monroe County

● INDICATES THE FIRST APPEARANCE OF A PAID NOTICE IN THIS NEWSPAPER.

● Alaimo, Mary

Survived by her brother & sister-in-law; John & Josephine, sisters & brothers-in-law; Rose & Felix Loiacono of FLA., Anna Palumbo of CA., Virginia & Fred Doria, nieces, nephews.

No prior calling. Services & Interment were private. Arrangements Falvo.

Alaimo, Pauline

Survived by her daughters and sons-in-law, Frances and John Vito, Connie and Samuel Orlando, Josephine and Bill Colombo; 2 sons and daughters-in-law, Al and Virginia, Thomas and Rochelle; 14 grand and 8 great-grandchildren; her brother, Louis Palermo, of CA; nieces, nephews.

Calling Mon. and Tues. 2-4 and 7-9 at the Falvo Funeral Home Inc., 1395 N. Goodman St. Funeral Service Wed. 9:00 from the funeral home and 9:30 at St. Francis Xavier Church. Interment Holy Sepulchre.

● DeMallie, Edward "Happy"

Monday, October 27, 1986. Survived by his sons and daughters-in-law, Robert S. & Loretta, Charles W. & Fanny DeMallie; stepsons and daughters-in-law, John E. & Audrey, James & Inez, Kenneth & Dolores, Roy & Sue of TX, Robert & Millie Francis; granddaughter and her husband, Betty Edna & Charles Herman of ME; several other grandchildren and great-grandchildren. He was a member of the Salvation Army and served as Welcome Sargent and Color Sargent. He was also a life member of the Asbestos Workers Local #26.

Friends may call Tuesday 2-4 & 7-9 at the Vay-Schleich & Meeson Funeral Home, Inc., 2692 Dewey Ave. where funeral services will be held Wednesday at 1 o'clock. Interment, Elmgrove Cemetery (Elmgrove & Spencerport Rd.). Friends wishing may make contributions to the Salvation Army.

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